

Application No.: 10/622,201  
Attorney Docket No.: 11899.0175.REUS07

### **REMARKS**

As noted above, the amended claims presented herein are identical to the amended claims presented in the amendment filed July 6, 2005, except for their format. The claims are formatted in the current amendment in order to present the amendments relative to the original patent claims, as requested by the Examiner.

#### **Status of the Claims**

Upon entry of the above amendment, claims 1-6, 8, 10-16, 18, 19, 21-33, 35, 36, 38-52, 57, 58, 69-85, 88-97, 102-131 and 134-155 are pending and claims 7, 9, 17, 20, 34, 37, 53-56, 59-68, 86, 87, 98-101, 132 and 133 are cancelled.

#### **Support for Amendment**

Claims 2, 3, 5, 6, 8, 10-14, 16, 18, 19, 21-27, 29-31, 33, 35, 36, 38-52, 57, 58, 69-73, 75-85, 88-97, 102-105 are amended to replace the term "a" with "the" in order to properly refer to a previous claim, as suggested by the Examiner at pages 4-5 of the Office Action.

Claims 4, 15, 32 are amended to define  $X_5$  with the term "provided that when  $X_1$  is D,  $X_2$  is T,  $X_3$  is S, and  $X_4$  is V, then  $X_5$  is A, R, N, D, C, Q, E, G, H, I, L, K, M, F, S, T, W, Y or V". The Examiner agreed in the interview of June 2, 2005, that this language would overcome the new matter and written descriptions rejections directed to that language. That amended language is supported throughout the disclosure of U.S. Patent No. 5,633,435 ("the '435 patent", e.g., col. 2, ll. 47-55 and col. 4, l. 50).

Application No.: 10/622,201  
Attorney Docket No.: 11899.0175.REUS07

Claims 6, 8, 16, 19, 33, and 36 are further amended to incorporate the language "provided that when  $X_1$  is D,  $X_2$  is T,  $X_3$  is S, and  $X_4$  is V, then  $X_5$  is Q" in order to be of proper dependent form, as suggested by the Examiner at page 5 of the Office Action.

Claims 10, 11, 13, 21, 22, 24, 38, 39, 57, 58, 69, 74, 77, 78 and 103-105 are further amended to be dependent upon a different claim, primarily to provide for proper dependency where a previous claim was cancelled or no longer provides for dependency.

Claims 27, 31, 40, 73, 78 are further amended to correct the spelling of "eucalyptus."

Claim 10 is further amended to clarify the EPSPS term to recite "the EPSPS enzyme has the sequence set forth in. . ." in response to the Examiner's rejection at page 6 of the Office Action.

Claims 58, 72 and 77 are further amended to refer to SEQ ID NO:9, which is supported in the disclosure of the patent, *e.g.*, at FIG. 8A and 8B and col. 28, ll. 6-16.

Claims 79-85 are further amended to clarify that the claimed seed is transgenic and comprises a particular DNA molecule, in response to the Examiner's rejection at page 6 of the Office Action.

Claims 88, 89, 90 and 93 are further amended to clarify that the listed SEQ ID NOs. are EPSPS encoding sequences, and not EPSPS enzyme sequences, in response to the Examiner's rejection at page 6 of the Office Action.

Application No.: 10/622,201  
Attorney Docket No.: 11899.0175.REUS07

Claims 107 and 113 are amended to parallel the language of the claims originally issued in the '435 patent (with the exception of the reference to SEQ ID NO. 70 instead of the sequence domains). In particular, the amendment to those claims includes adding the phrase, "where the promoter is heterologous with respect to the structural DNA sequence and adapted to cause sufficient expression of the encoded EPSPS enzyme to enhance the glyphosate tolerance of a plant cell transformed with the DNA molecule," *e.g.*, as stated in the original patent claim 4.

Claim 113 is further amended to revise the preamble to refer to a "plant" instead of "plants," in response to the objection in the Office Action at page 5.

Claims 134-155 are newly added in order to have a have a separate set of claims for (i) the sequence domains and SEQ ID NOS. 41, 42, 43 and 44, (ii) SEQ ID NOS. 2, 3, 4, 5, and 6 and 7, and (iii) SEQ ID NO. 70, and for each of those sets are claimed a recombinant, double-stranded DNA molecule, a method of producing genetically transformed plants which are tolerant toward glyphosate herbicide, a method for selectively controlling weeds in a field containing a crop having planted crop seeds or plants, a plant cell, a plant and a seed. Those new claims are of the same language and format as the claims originally issued in the patent, except for the particular SEQ ID NOs for the EPSPS DNA and enzyme sequences.

\* \* \*

In view of the foregoing, applicants believe that the claims in this application are in condition for allowance. If, in the opinion of the Examiner, a telephonic interview would expedite the prosecution of the subject application, the Examiner is invited to contact the undersigned attorney at the telephone number listed below.

Application No.: 10/622,201  
Attorney Docket No.: 11899.0175.REUS07

If any fees are required for any reason related to this application, the Commissioner is authorized to deduct said fees from Deposit Account No. 01-2508/11899.0175.REUS07/WAA

Date: August 18, 2005

HOWREY LLP  
750 Bering Drive  
Houston, TX 77057-2198  
(713) 787-1400

Customer No. 45607

Respectfully submitted,



Janelle D. Waack  
Reg. No. 36,300

Attorney for Assignee  
MONSANTO TECHNOLOGY LLC

CERTIFICATE OF FACSIMILAE  
37 C.F.R. 1.8

I hereby certify that this correspondence is being sent via facsimile to the U.S. Patent and Trademark Office at fax no. 571-273-8300, on August 18, 2005:

  
Signature